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CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

## Notification

The 12th December 2024

**No. 479697-HII(2)-2024/18675.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **107/2021** dated **21.10.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

OM PARKASH S/O SH. RAM JEET, H. NO.106/20, BLOCK 'K', COLONY NO. 4,  
INDUSTRIAL AREA, PHASE - 1, CHANDIGARH. (Workman)

AND

M/S UNITED FASTENERS, PLOT NO.345, INDUSTRIAL AREA, PHASE - I, CHANDIGARH  
THROUGH ITS DIRECTOR. (Management)

## AWARD

1. Om Parkash, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Operator in the month of April, 1994. The workman remained in the uninterrupted employment up to 16.10.2020 when his services were illegally & wrongly terminated by refusing of work. The workman was drawing ₹18,500/- per month as wages. On 19.09.2020 the workman proceeded on authorised leave to attend the last rites of his mother-in-law in U.P. The workman was on authorised leave from 19.09.2020 to 14.10.2020. The workman joined his duty on 15.10.2020. On 16.10.2020 after duty hours, the workman was refused work alleging that the management is closing down his industry with immediate effect. In fact, the management did not close the factory. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The junior persons were retained in service when the service of the workman was terminated. The management has thus violated Section 25H of the ID Act. The violation of the same makes the termination void. The workman lodged a complaint dated 26.10.2020 with the Labour Inspector U.T. Chandigarh but no settlement could be made possible. For his reinstatement, the workman served upon the management a demand

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notice dated 29.12.2020. The management did not reply the demand notice and also did not take the workman back on duty. The Conciliation Officer, U.T. Chandigarh was requested for his intervention. The management once appeared before the Conciliation Officer, U.T. Chandigarh and thereafter did not appear on any date fixed for settlement. Action of the management in terminating the services of the workman is illegal, wrong, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service and full back wages.

3. On notice, the management contested the claim of the workman by filing written statement on 09.03.2022, wherein preliminary objections are raised on the ground that the present claim statement is not maintainable and is without jurisdiction and liable to be dismissed on the ground that the present subject matter does not fall within the ambit of Section 2A of the ID Act. The workman himself left the services of the answering management after taking all his dues for better future prospects. Thus, the question of termination does not arise. The answering management commenced / started its business w.e.f. 19.03.2020 under the name & style of M/s United Fasteners. The answering management is proprietorship concern and the same was owned & managed by Sh. Divyam Setia. The answering management duly registered under the Industries Department, Chandigarh Administration, vide registration No.04FMQPS5382Q1ZV dated 19.03.2020. Thereafter, bank account in the name of the said firm was also opened on 13.04.2020. The workman worked with the answering management up to 18.09.2020 and thereafter went on leave from 19.09.2020 to 30.09.2020. The workman also took ₹ 2,500/- advance from the answering managements. The workman was supposed to join duties on 01.10.2020 with the answering management however, the workman did not return for the reasons best know to him. On 15.10.2020 the workman came back to resume duty and worked up to 16.10.2020 i.e. only 2 days. Therefore, on 16.10.2020 the workman himself left the services of the answering management and also took full & final dues from the answering management.

4. On merits, it is stated that the answering management took over the business w.e.f. 19.03.2020. The workman worked under the answering management from 19.03.2020 to 18.09.2020 and drawing ₹11,500/- per month as wages. The workman went on leave from 19.09.2020 to 30.09.2020 after taking ₹ 2,500/- as advance payment from the answering management. On 15.10.2020 the workman came back to resume duty and worked up to 16.10.2020 i.e. only 2 days. Therefore, on 16.10.2020 the workman himself left the services of the answering management for better future prospects and also took full & final dues from the answering management. The question of violation of Section 25H of the ID Act by the answering management does not arise. The management has never terminated the services of the workman. The management has not violated any provisions of the ID Act. It is admitted being matter of record that the workman lodged a complaint dated 26.10.2020 with the Labour Inspector U.T. Chandigarh but no settlement could be made possible. The demand notice was served upon the answering management and the answering management filed detailed reply to the said notice. The proceedings before the Conciliation Officer are matter of record. The management has not violated any provisions of the ID Act. Remaining averments of the claim statement were denied being misconceived, mis-stated and false. Prayer is made that the claim of the workman may be dismissed.

5. The workman filed rejoinder, wherein the contents of written statement except the admitted facts are denied as wrong and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 26.07.2022 :-

1. Whether the workman was terminated illegally, as alleged ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for reinstatement with continuity of service and full back wages, as prayed for ? OPW
3. Whether the statement of claim is not maintainable being without jurisdiction ? OPM
4. Relief.

7. In evidence, the workman Om Parkash examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A'. The workman also examined summoned witness AW2 Gurmeet Singh - Assistant, Office of ESI, Sector 29, Chandigarh, proved the documents attested by the Branch Manager, ESIC, Chandigarh Exhibit 'AW2/1' to Exhibit 'AW2/4'.

**Exhibit 'AW2/1'** is ledger sheet of Insured Person Om Parkash S/o Ram Jit, Insurance No.1710643521.

**Exhibit 'AW2/2'** is return of contributions of ESIC for the period w.e.f. 1st October 2009 to 31st March 2021.

**Exhibit 'AW2/3'** is detail of ESI record of the workman as on 16.11.2023.

**Exhibit 'AW2/4'** is attested copy of authority letter issued in favour of Gurmeet Singh by Branch Manager, ESI, Chandigarh.

8. The workman also examined summoned witness AW3 Divyam Setia - Proprietor of M/s United Fasteners. Learned Representative for the workman closed the evidence in affirmative.

9. On the other hand, the management examined MW1 Divyam Setia - Proprietor and tendered into evidence his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' and Exhibit 'M2'.

**Exhibit 'M1'** is copy of registration certificate of M/s United Fasteners under Rule 10(1) of Good & Service Tax (GST) Act.

**Exhibit 'M2'** is copy of statement of account of bank account No.50200048927138 maintained with HDFC for the period from 01.04.2020 to 31.03.2021.

10. During cross-examination MW1 brought into evidence two photographs of display board of United Fasteners on which GST No.04FMQPS5382Q1ZV is mentioned vide Exhibit 'M3' & Exhibit 'M4' respectively.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

**Issues No. 1 & 2 :**

12. Both these issues are taken up together being interconnected and to avoid repetition of discussion.

13. Onus to prove both these issues is on the workman.

14. Under these issues the workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity.

15. The workman also examined summoned witness AW2 Gurmeet Singh - Assistant from the Office of ESI, Sector 29, Chandigarh, who deposed that he has brought the summoned record. He proved the online copies of duly attested by the Branch Manager, ESIC, Chandigarh i.e. ledger sheet of Insured Person Om Parkash S/o Ram Jit, Insurance No.1710643521; return of contributions of ESIC for the period w.e.f. 1st October 2009 to 31st March 2021; detail of ESI record of the workman as on 16.11.2023 and attested copy of authority letter issued in his favour by Branch Manager, ESI, Chandigarh vide Exhibit 'AW2/1' to Exhibit 'AW2/4' respectively.

16. The workman also examined summoned witness AW3 Divyam Setia - Proprietor of M/s United Fasteners, who deposed that he has appeared in pursuance of summons issued to person concerned, Office of United Fasteners, Plot No.345, Industrial Area, Phase - I, Chandigarh. He is Proprietor of M/s United Fasteners. He has filed written statement in this case under his signatures and seal of United Fasteners, wherein in para 1 of reply on merits, he has mentioned that the answering respondent took over the business w.e.f. 19.03.2020. He has not brought the sale deed record of United Fasteners w.e.f. 19.03.2020 and prior to 19.03.2020 partnership deed of the company as mentioned in the summons because there is no sale deed record of the United Fasteners and United Fasteners was never a partnership concern. Prior to 19.03.2020



Mrs. Neeru Setia W/o Mahesh Setia (Mahesh Setia S/o Late Diwan Chand Setia) was sole Proprietor of M/s United Fasteners functioning at Plot No.345, Industrial Area, Phase - I, Chandigarh.

17. Learned Representative for the workman referred documents Exhibit AW2/1' to Exhibit 'AW2/4'.

18. On the other hand, the management examined MW1 Divyam Setia - Proprietor, who tendered his affidavit Exhibit 'MW1/A' wherein he deposed the entire material contents of the written statement, which are not reproduced in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M4'.

19. From the oral as well as documentary evidence led by the parties, it comes out that workman has alleged that he was appointed by the management of M/s United Fasteners as Operator on April 2, 1994 and remained in continuous employment up to 16.10.2020. However, he was on sanctioned leave from the period w.e.f. 19.09.2020 to 14.10.2020 and his services were terminated by the M/s United Fasteners on 16.10.2020 after duty hours on the pretext that management is closing down its industry with immediate effect.

20. On the other hand, the management did not dispute the leave from 19.09.2020 to 30.09.2020 and pleaded that from 01.10.2020 to 14.10.2020 workman did not report for duty. The workman resumed duty on 15.10.2020 and worked up to 16.10.2020 i.e. only for 2 days. On 16.10.2020 workman himself left the job for the better future prospects.

21. From the above-mentioned pleadings of the management, it is duly established that the workman performed duty up to 16.10.2020. The management has further taken the plea that Divyam Setia - Proprietor of United Fasteners taken over the business w.e.f. 19.03.2020 under the name & style of M/s United Fasteners. The management is a proprietorship concern, owned & managed by Divyam Setia. M/s United Fasteners firm is registered under Industries Department vide registration No.04FMQPSS382Q1ZV dated 19.03.2020 vide Exhibit 'W1'. Therefore, the firm opened the bank account on 13.04.2020. Divyam Setia S/o Ashwani Kumar Setia S/o Late Diwan Chand Setia / AW2 stated that prior to 19.03.2020 Mrs. Neeru Setia W/o Mahesh Setia S/o Late Diwan Chand Setia was sole Proprietor of M/s United Fasteners functioning at Plot No.345, Industrial Area, Phase - I, Chandigarh. During cross-examination AW3 stated that he started a fresh business in the name & style of M/s United Fasteners w.e.f. 19.03.2020 with GST No.04FMQPS5382Q1ZV as a proprietorship concern as per online copy of registration certificate Exhibit 'M1'. He has no concern with M/s United Fasteners prior to 19.03.2020. Now the dispute between the parties is that workman alleges that Divyam Setia taken over the same business, at the same plot with the same machinery and workmen with same name & style M/s United Fasteners which was previously owned by Proprietor Ms. Neeru Setia. On the other hand, Divyam Setia did not dispute the fact that he is running the business with same name at the same plot / location but taken the plea that from the date of taking over the business w.e.f. 19.03.2020, he started business afresh having no concern with the business previously run by Mrs. Neeru Setia. To resolve this controversy, it is material to note that w.e.f. 19.03.2020 Divyam Setia has taken over the business from previous Proprietor Mrs. Neeru Setia with the same name M/s United Fasteners, running on the same plot No.345, Industrial Area, Phase - I, Chandigarh with the same employees, who was previously working in the firm under Proprietor Mrs. Neeru Setia and started to operate the business w.e.f. 01.04.2020. Besides, it is own plea of Divyam Setia in his written statement that workman remained in his employment w.e.f. 19.03.2020 to 18.09.2020 and he worked for 2 days on 15.10.2020 and 16.10.2020. Further from the ESI contribution record proved by the official witness AW2 Gurmeet Singh - Senior Assistant Office of ESIC, Sector 29, Chandigarh, it is proved that the workman is covered under the ESIC scheme during the period 01.10.2009 to 31.03.2021 and in the said period the employer code was 107000304390000599, which includes the period of workman's employment under Divyam Setia, Proprietor of M/s United Fastener, who stated to have taken over the business w.e.f. 01.04.2020. In cross-examination AW2 denied the suggestion that code mentioned on the ledger sheet / Exhibit 'AW2/1' is not of M/s United Fasteners. The suggestion denied by a witness is no evidence unless proved otherwise. In this case, the management did not prove the record of ESIC to show that M/s United Fasteners under proprietorship of Divyam Setia runs with different

employer code. All these facts & circumstances would suggest that during service period of workman w.e.f. April, 1994 to October, 2020 the ownership of firm M/s United Fasteners remained under proprietorship of Mrs. Neeru Setia up to 18.03.2020 and the existing business of M/s United Fasteners was taken over by Proprietor Divyam Setia w.e.f. 19.03.2020. When a new Proprietor takes over an existing business from previous Proprietor, the legal responsibilities that the new Proprietor assumes will depend on various factors as such as nature of acquisition, the terms of purchase agreement and the applicable laws of the jurisdiction. However, generally, the new Proprietor may assume the following responsibilities such as liabilities & debts including contractual liabilities, tax liabilities, employees and labour obligations, continuity of employment, responsibility towards payment of gratuity, provident fund and other accumulated benefits etc. The ID Act contains specific provisions addressing the rights of workers when there is no transfer of ownership of an industrial establishment. These provisions are designed to protect the interests of employees during such a transition. The key provisions relate to transfer of ownership are outlined in Section 25FF and Section 25F of the ID Act. Section 25FF of the ID Act provides for compensation to workman in the event of transfer of ownership or management of an undertaking. Under this Section if the ownership or management of an industrial undertaking is transferred, the workmen employed in that establishment are entitled to compensation as if they have been retrenched (laid off) from the establishment. This compensation is calculated based on the provisions laid down in Section 25FF of the ID Act, which reads as below :-

***"25FF. Compensation to workmen in case of transfer of undertaking.-Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:***

*Provided that nothing in this setrial shall apply to a workman in any case where there has been a change of employers by reason of transfer; if -*

- (a) the service of the workman has not been interrupted by such transfer;*
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and*
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis of his service has been continuous and has not been interrupted by the transfer."*

If all the above conditions are satisfied, the workmen are not entitled to retrenchment compensation.

22. In the present case, it is proved that ownership of firm M/s United Fasteners changed w.e.f. 19.03.2020. The Proprietor Divyam Setia has denied the benefit of the employment of the workman with previous proprietor on the ground that his liability starts from 01.04.2020 when he has taken over the business. Thus, Divyam Setia has denied the benefits of continuity of service to the workman. Although it is proved on record, workman remained in continuous service of the firm M/s United Fasteners w.e.f. April, 2009 to 16.10.2020 and fulfills the requirement of continuous service of 240 days in 12 calendar months preceding termination (service terminated w.e.f. 17.10.2020). Thus, the workman falls within the definition of 'continuous service' as defined under Section 25B of the ID Act. Termination of service of the workman on 17.10.2020 without compliance of conditions laid down under Section 25F of the ID Act is illegal as denial of continuity of service by the new owner amounts to violation of Section 25FF of the ID Act. In the present case, it is not the plea of the management that it had complied with Section 25F or Section 25FF before termination of service of the workman. Consequently, action of terminating services of the workman w.e.f. 17.10.2020 is illegal, null & void.

23. Plea taken by the management that workman had taken advance of ₹ 2,500/- and did not join duty to avoid the repayment of loan, does not stand proved because there is no document on record showing advancement of loan amounting to ₹ 2,500/- to the workman. AW1 in his cross-examination denied the suggestion as wrong that he obtained advance payment of ₹ 2,500/- from the management. MW1 Divyam Setia in his cross-examination stated that he has not taken any action against the workman for effecting recovery of alleged loan of ₹ 2,500/-.

24. Keeping in view the length of service, nature of employment, last paid salary of the workman in the sum of ₹ 18,500/-, the workman is held entitled to lump sum compensation of ₹ 1,30,000/-.

25. Accordingly, both these issues are decided in favour of the workman and against the management.

**Issue No. 3 :**

26. Onus to prove this issue is on the management.

27. On aggrieved from termination of services by the management, the workman raised industrial dispute and on failure of conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide his failure report bearing Memo No.1881 dated 18.08.2021, the workman was left with no other option than to seek remedy before this Court / Tribunal under Section 2A(2) of the ID Act. The present claim statement has been presented with a valid cause of action and locus standi by following the due procedure under the ID Act which is well within the territorial jurisdiction of the present Court / Tribunal. I do not find any defect so far as the maintainability of the present industrial dispute is concerned.

28. Accordingly, this issue is decided against the management and in favour of the workman.

**Relief :**

29. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled to lump sum compensation of ₹ 1,30,000/-. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the abovesaid amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152

Dated : 21.10.2024.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 12th December 2024

**No. 479678-HII(2)-2024/18673.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **49/2022** dated **10.10.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANKUR KUMAR S/O BHUDEV SINGH, R/O V.P.O. NAVADA CHAUHAN, TEHSIL DHAMPUR, DISTRICT BIJNOR, UTTAR PRADESH. (Workman)

AND

1. STEEL STRIPS INFRASTRUCTURE LTD. THROUGH ITS MANAGING DIRECTOR, S.C.O. NO.49-50-51, SECTOR 26, MADHYA MARG, CHANDIGARH . 160019.
2. STEEL STRIPS WHEELS LTD. THROUGH ITS MANAGING DIRECTOR, S.C.O. NO.49.50.51, SECTOR 26, MADHYA MARG, CHANDIGARH. 160019.
3. EXECUTIVE DIRECTOR (RESEARCH & DEVELOPMENT HEAD), STEEL STRIPS WHEELS LTD., S.C.O. NO.49-50-51, SECTOR 26, MADHYA MARG, CHANDIGARH - 160019.
4. GENERAL MANAGER, R&D DEPARTMENT, MANUFACTURING PLANT (PRODUCTION UNIT), STEEL STRIPS WHEELS LTD., VILLAGE LEHLI / SOMALHERI, TEHSIL DERABASSI, DISTRICT S.A.S. NAGAR, MOHALI, DAPPAR, PUNJAB \_ 140506.
5. HUMAN RESOURCE MANAGER, STEEL STRIPS WHEELS LTD., VILLAGE LEHLI/SOMALHERI, TEHSIL DERABASSI, DISTRICT S.A.S. NAGAR, MOHALI, DAPPAR, PUNJAB - 140506. (Management)

**AWARD**

1. Ankur Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant / workman (*here-in-after 'workman'*) was employed as an Assistant Manager vide appointment letter dated 15.04.2019 by the management of Steel Strips Wheels Ltd., a sister concern of Steel Strips Infrastructure Ltd. The performance of the workman throughout his tenure of service with the management was without any fault. The appointment letter dated 15.04.2019 issued by the employer wrongly specifies / asserts that the said worker has been appointed as 'Assistant Manager' in the employer company. Whereas, the workman was never assigned work in accordance with the said appointment letter. The workman never performed his duties in the nature of Manager / Supervisor in the employer company. In actual, since his appointment in the employer company, he had been performing his duty as an 'Engineer' in its Product Design & Development Department and discharged / performed the below mentioned roles & duties.

1. Receiving RFQ & Customer requirements from Marketing Department.
2. Undertaking the customer requirements.
3. Discussion with Marketing team for ascertaining customer requirements.

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4. Preparing data & drawing as per received RFQ & customer requirements.
5. Checking facility of asking products.
6. 2D preparing by using auto cad software.
7. 3D Model Making by using Uni-Graphic NX Software.
8. Giving feedback to the Marketing Department regarding the received RFQ.
9. Preparing new raw material requirements and tooling requirements as per customers RFQ's.
10. Understanding the problem or prediction while development and manufacturing.

The above roles & duties performed by the workman in the employer company clearly depicts that the said functions, in no way, fall within the purview of the role & responsibilities of an Assistant Manager as asserted by the above appointment letter. Moreover, had the workman been serving on the managerial post, then he would have sanctioned leave to other workman under him, by virtue of authority conferred by the alleged managerial position. Thus, it is crystal clear that the workman had never worked in the capacity of a manager. The management / employer for the reasons best known to them, has issued the wrongful and incorrect appointment letter by projecting the appointment of the workman as Assistant Manager. Probably, the management would have done the same, deliberately, purposefully and with the ulterior motive to avoid being implicated / dragged in future litigation of whatsoever nature. The grievance of the workman is that despite the fact that he has discharged / performed the roles & responsibilities assigned by the employer company with utmost sincerity, integrity, honestly, passionately, all of a sudden, on 12.07.2021, he was wrongfully terminated by an employee of HR Department namely Naresh Kapil and General Manager of R&D Department namely Sarabjit Singh, by verbally directing him not to report on duty thereafter, without stating any reason thereto. Moreover, the above officials suddenly asked the workman to surrender his identity card / sim card / attendance card without any justifiable & legitimate reason and stopped assigning him further work. The workman was never issued any warning letter, advisory letter, charge-sheet etc, prior to the said illegal retrenchment / termination by the management. On the very next day, i.e. 13.07.2021, the workman was not allowed to enter into the company premises by the officials of the employer company without any justified reason. Consequently, on 21.07.2021, the workman through his Legal Counsel served a legal notice bearing Reference No. 52/NPB/2021 to the managements through registered post as well as email, seeking answers to relevant questions of arbitrary termination of the workman by the management, without serving any show cause notice for any default on his part and acting contrary to the principles of natural justice and in flagrant violation of Section 25F & 25N of ID Act as well as the terms & conditions of the said appointment letter. When the management did not reply to the aforesaid legal notice dated 21.07.2021, then, the workman tried to discuss the matter to his immediate senior. Nonetheless, on 12.08.2021, one R. Ravishankar spoke on call and forced the workman to present his resignation letter stating that if the workman does not resign, then, they will ruin his career and all the companies will blacklist him. Consequently, after waiting for more than 15 days, the workman served a demand notice dated 16.08.2021 under The Insolvency and Bankruptcy Code, 2016 through registered post as well as email, wherein he demanded payment in respect of unpaid operational debt due for the breach of terms & conditions of the appointment letter dated 15.04.2019 in view & compliance of Clause 4 of said appointment letter. Subsequently, the employer-company / management, on the same day replied to the said demand notice via mail stating that workman has been absent from the duty without any information which is a serious misconduct and further asked him to show up in the employer company. Subsequently, the workman along with the copy of said demand notice & reply sent by employer company, went to the premises of the employer company after punching sim / attendance card on punching machine. Instead of allowing the claimant into the R & D Department, one Jasmer & Naresh Kapil (officials of management No. 5) asked him to go to the HR Department where they forced & pressurized the workman to write & sign the resignation letter. When the said managements and their officials ill-treated, abused & threw away the workman out of the company premises without punching the out-card, the workman submitted application dated 17.08.2021 to



S.H.O Police Station Lehli, Mohali which bears DDR No.13/5D/PP Nahar, in this regard. However, no action has been taken on the said complaint so far by the said police officials. Thereafter, the workman also sent a mail dated 18.08.2021 to Mr. Naresh Kapil, HR Head, R Ravishankar (R & D Head) & Sarabjeet Singh (GM R&D) explaining the entire series of events that happened with him in the premises of the said employer company on 17.08.2021 and another mail explaining the ill behaviour of the officials towards the workman, in past one month as well as asking for the reason of the same. Consequently, on 20.08.2021, the management sent termination letter to the workman through email, wherein they levelled false & frivolous allegations against the workman. Despite having knowledge of the procedure of termination, the management deliberately failed to comply with the same, as a result of which the workman has undergone a lot of suffering and irreparable loss. The management has committed fragrant violations of Sections 25F & 25N of the ID Act. Besides the violations of provisions of ID Act, the management has even violated the terms & conditions of the appointment letter issued by itself, as one of its terms specified that the contract of appointment will be terminated by giving three months prior notice, by either party or the payment of three months last drawn basic salary in lieu of such notice on either side. Whereas, the management neither served any three months advance notice nor paid the three months last drawn basic salary. The action, conduct and acts of the management clearly reflects as to how the workman had been exploited in the hands of the said management, violating his fundamental, constitutional rights. The workman has suffered irreparable loss not only due to illegal termination but also due to ill treatment & abusive behaviour of the management and their officials. It has not only led to loss of livelihood but had also disturbed the peace of mind of the workman. After the above said illegal termination, the workman had served demand notice dated 29.10.2021 under Section 2A of ID Act, to the management, demanding re-instatement with the back wages along with market rate of interest and appropriate compensation / damages in respect of illegal retrenchment / termination. When the workman did not receive any positive response or assurance by the management to the aforesaid legal notices & demand issued to the management, an application dated 29.10.2021 was moved by the workman before the Assistant Labour Commissioner-cum-Conciliation Officer in the Labour Court, Sector 30-B, Chandigarh. However, after the commencement of conciliation proceedings, the demand notice remained unsettled as the management stood adamant and the Conciliation Officer vide letter dated 19.04.2022 bearing Memo No.1010 stated that no amicable settlement has been possible during the course of conciliation proceedings and further advised the workman to approach the appropriate forum for adjudication of his dispute. The workman was left with no other alternative remedy expect filing the present statement of claim. Further, the claim falls well within the jurisdiction of this Tribunal as the appointment letter of the workman expressly outlines the exclusive jurisdiction of Chandigarh Courts. Prayer is made to set aside the termination letter 20.08.2021, being illegal and seeking reinstatement with back wages along with interest rate @12% and compensation of ₹ 5 Lacs to the workman in respect of harassment and illegal retrenchment / termination.

3. On notice, management No. 1 to 5 contested the claim application (*here-in-after 'claim statement'*) by filing joint written statement wherein preliminary objections are raised on the ground that the present claim statement under section 2A(2) of the ID Act is not maintainable. This Tribunal lacks territorial jurisdiction to entertain the same. The petitioner (*here-in workman*) was working at the factory of the management No. 2 to 5 situated at Village Somalheri, near Dappar, Tehsil Derabassi, District Mohali, Punjab and he never ever worked within the territorial jurisdiction of Union Territory of Chandigarh. As such, the claim statement is liable to be rejected on this sole ground. The appropriate Government did not apply its mind in entertaining the alleged industrial dispute and advising the petitioner to approach appropriate forum for adjudication of his dispute. The management took specific plea before the Conciliation Officer about lack of jurisdiction by Authorities of UT, Chandigarh to entertain the said demand notice yet they entertained the same and advised the petitioner to pursue his remedy. Besides, the petitioner was engaged by the managements as Assistant Manager at a basic salary of ₹ 18,300/- along with other allowances as admissible to the employees of Management Cadre, which appointment was duly accepted by the petitioner and he joined as Assistant Manager on 15.04.2019. Petitioner was drawing a gross salary of ₹ 44,536/-. The petitioner was posted in Research and Development Department and was exercising managerial powers. Thus, he does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act. The petitioner is not competent to invoke the remedy under ID Act.

4. Further on merits it is stated that the petitioner himself started remaining absent from duty w.e.f. 13.07.2021 and as per Clause 4 of his appointment letter, his services were terminated on 20.08.2021 for unauthorized absence for more than 5 days. The termination was strictly in accordance with terms & conditions of his appointment duly accepted by him and as such the same also falls under Section 2(oo)(bb) of the ID Act. It is admitted to the extent that the petitioner was employed as Assistant Manager by the managements and the duties detailed in para 2 of the claim statement are part and parcel of his work besides other management and supervisory functions. The petitioner has not raised this plea in his demand notice that he was not performing duties of an Assistant Manager and that he was a 'workman'. The petitioner is also claiming reinstatement on the post of Assistant Manager only. Thus, it does not lie in his mouth now to take a new plea which he never raised in his demand notice which is the basis of present case raised by the petitioner. The petitioner never raised any objection to his appointment as Assistant Manager during his tenure with the respondent-Company nor did he complain that he was being given duties lower to his rank and as such he is estopped to raise this plea at this stage. There were 3 employees working under the control and supervision of the petitioner. The petitioner has concocted a false story to mislead this Court and to claim unlawful relief to which he is not entitled to. In-fact the petitioner started remaining absent from duty w.e.f. 13.07.2021 and never bothered to join back his duties. On the other hand, the petitioner started un-necessary correspondence with the managements in order to create false evidence to be used at a later stage. The management issued him letters / emails dated 09.08.2021 and 18.08.2021 to which he did not respond positively and ultimately the services of petitioner were terminated vide letter dated 20.08.2021. The allegations levelled by the petitioner against Sh. Naresh Kapil and Mr. Sarabjit Singh are totally wrong and hence denied. The terms & conditions duly accepted by the petitioner contained a specific stipulation in the appointment letter that his services can be terminated in case of absence for more than 5 days. The statement of claim contains pleading beyond the demand notice and such pleas cannot be taken into account. It is further stated that the petitioner was selected for the post of Assistant Manager and he was accordingly issued appointment letter for that post which he accepted without any reservation. The Petitioner never represented against the fact that he was appointed as Engineer and was designated as Assistant Manager. He was rather enjoying the perks of Management cadre and his salary was also ₹ 44,536/- which is much higher to the post of an Engineer. It is admitted to the extent that the petitioner was performing his duties of Assistant Manager to the satisfaction of management and he was also granted increment of ₹ 3,462/- on 10.09.2020. The petitioner may be put to strict proof as to his allegations levelled in the claim statement. It is admitted to the extent that the petitioner issued a notice dated 21.07.2021 making certain allegations and false averments which were suitably replied by the management vide letter dated 09.08.2021. The petitioner was also told vide said letter that he was absenting from duty w.e.f. 13.07.2021. The allegations raised by the petitioner are false. It is admitted to the extent that the legal notice issued by the petitioner under The Insolvency and Bankruptcy Code, 2016 was received and was replied by the management. The petitioner filed a false complaint with the Police and management represented to the Police department against such false complaint. The Police thereafter did not take cognizance of the same and rejected the said complaint when correct facts were brought to their notice. The Petitioner on the one hand, remained absent from duty and on the other hand, was sending false letters / emails to create evidence to be used at a later stage. In fact, he was never interested to continue his employment with the managements and was asking huge amount of money to stop these activities where he was levelling allegations against various senior officers of the management company. Since the management did not yield to his illegal demands, he started issuing legal notices and Police complaints on the ill advice of some outside element. The Petitioner violated the terms & conditions of his appointment letter by remaining absent for more than 5 days, his services were terminated on 20.08.2021 by invoking Clause 4 of his appointment letter. The provisions of Section 25F or 25N of the ID Act are not attracted. The petitioner is not a 'workman' and as such is not entitled to invoke the provisions of the ID Act. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with heavy costs.

5. Workman filed rejoinder on 20.04.2023, wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of parties, following issues were framed vide order dated 20.04.2023 and additional issue No.5-A was framed vide order dated 27.09.2024 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits along with interest as prayed for ? OPW
3. Whether the workman is entitled to compensation as prayed for ? OPW
4. Whether the jurisdiction of present Court / Tribunal is barred ? OPM
5. Whether the claim statement is not maintainable ? OPM
- 5-A. Whether the workman does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
6. Relief.

7. In evidence, workman Ankur Kumar examined himself as AW1 and re-examined on 26.02.2024. AW1 tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W5' and Exhibit 'W5/1' to Exhibit 'W5/4' and Mark 'A' to Mark 'F'.

**Exhibit 'W1'** is appointment letter dated 15.04.2019.

**Exhibit 'W2'** is office order dated 10.09.2020.

**Exhibit 'W3'** is representation dated 17.08.2021 to S.H.O., Police Station, Lehli, Mohali, Punjab.

**Exhibit 'W4'** is termination letter dated 20.08.2021.

**Exhibit 'W5'** is letter dated 22.09.2021 sent to the DMD through registered post.

**Exhibit 'W5/1'** to **Exhibit 'W5/4'** are postal receipts dated 22.09.2021.

**Mark 'A'** is hardcopy of e-mail dated 16.08.2021.

**Mark 'B'** is hardcopy of e-mail dated 19.08.2021.

**Mark 'C'** is hardcopy of e-mail dated 18.08.2021.

**Mark 'D'** is hardcopy of e-mail dated 20.08.2021.

**Mark 'E'** is hardcopy of e-mail dated 30.08.2021.

**Mark 'F'** is hardcopy of e-mail dated 02.10.2021.

8. It is pertinent to mention here that the management in cross-examination of AW1 brought into evidence documents Exhibit 'M1' to Exhibit 'M3'.

**Exhibit 'M1'** is copy of legal notice dated 21.07.2021 issued by the workman to the management.

**Exhibit 'M2'** is copy of joining report dated 15.04.2019 submitted by the workman to the management company.

**Exhibit 'M3'** is copy of workman's bio-data submitted by the workman to the management company at the time of his joining.

9. On 29.04.2024 workman closed his evidence in affirmative.



10. On the other hand, managements No.1 to 5 examined MW1 Naresh Kumar Kapil - Assistant General Manager with M/s Steel Strips Wheels Limited, Village Somalheri - Lehli, District Dera Bassi, Tehsil Mohali, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M4' to Exhibit 'M8'. The original of documents Exhibit 'M4' to Exhibit 'M8' were produced at the time of recording testimony, the same were seen and returned.

**Exhibit 'M4' & Exhibit 'M5'** is Board Resolutions dated 27.07.2016 and 11.09.2022 respectively.

**Exhibit 'M6'** is reply dated 11.01.2022 filed by the management to demand notice dated 29.10.2021.

**Exhibit 'M7'** is letter dated 09.08.2021 sent by the management to Sh. Ankur Kumar.

**Exhibit 'M8'** is demand notice dated 16.08.2021 raised by Ankur Kumar under Insolvency and Bankruptcy Code, 2016.

11. It is pertinent to mention here that MW1 the management has brought into evidence copy of appointment letter dated 15.04.2019 vide **Exhibit 'MX'**. On 12.09.2024 Learned Representative for managements No.1 to 5 closed oral evidence. On 10.10.2024 Learned Representative for managements No.1 to 5 closed documentary evidence.

12. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue wise findings are as below :-

**Issue No. 4 :**

13. This issue is taken up first as it goes to the root of the case.

14. Onus to prove this issue is on the management.

15. Under this issue Learned Representative for the management argued that the claimant was working at the factory of managements No.2 to 5 situated at Village Somalheri, Near Dappar, Tehsil Derabassi, District Mohali, Punjab. The claimant never worked within the territory of U.T. Chandigarh. To support his argument Learned Representative for the management referred cross-examination of AW1 Ankur Kumar / claimant where he stated that he accepted the terms & conditions as offered to him by the management in the appointment letter / Exhibit 'W1'. AW1 admitted as correct that during tenure of his service, he remained posted at Dappar plant. He has not worked at Chandigarh. Learned Representative for the management further argued that in view of the fact that the claimant during entire tenure of his service has worked at Dappar Plant, Tehsil Derabassi, District Mohali, Punjab, therefore, this Court at U.T. Chandigarh has no territorial jurisdiction to try and decide the present industrial dispute. It is further argued by Learned Representative for the management that on raising of demand notice by the workman, in conciliation proceedings before the Assistant Labour Commissioner, U.T. Chandigarh, the management raises the objection of territorial jurisdiction in reply to demand notice Exhibit 'M6', but despite that the IDR is wrongly presented in this Court on the basis of failure report of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh bearing Memo No.1010 dated 19.04.2022.

16. On the other hand, it is argued by Learned Representative for the workman that the management has not disputed the appointment letter / Exhibit 'W1'. The terms & conditions incorporated in Clause 9(i) of the appointment letter Exhibit 'W1', deals with the jurisdiction clause, which is reproduced as below :-

*"i. All disputes raising out of this letter of appointment or in relation to the service with us shall be subject to the exclusive jurisdiction of Chandigarh Courts only irrespective of place of delivery, place of performance or place of payment under this appointment letter wherever the dispute arose during the continuance of the service or after the employee ceased to be a servant of the Company."*

17. The aforesaid terms & conditions of appointment letter are binding upon the employer. Thus, by invoking the Clause 9(i) of the appointment letter / Exhibit 'W1', the industrial dispute presented before this Court at U.T. Chandigarh.

18. Learned Representative for the workman argued that the management has also relied upon the appointment letter dated 15.04.2019 / Exhibit 'MX' (the same appointment letter dated 15.04.2019 is relied upon by the workman as Exhibit 'W1'). Learned Representative for the workman argued that MW1 Naresh Kumar Kapil - Assistant Manager, M/s Steel Strip Wheels Ltd. when put to cross-examination stated that Head Office of M/s Steel Strips Infrastructure Limited and M/s Steel Strips Wheels Limited is in Sector 26, Chandigarh. M/s Steel Strips Wheels Limited has 5 sister companies. Workman Ankur was employed in M/s Steel Strips Wheels Limited - management No.2. He has been the copy of appointment letter dated 15.04.2019 which was issued to the workman by Steel Strips Infrastructure Limited and same is Exhibit 'MX'. The appointment letter to the workman was issued by the management No.1 i.e. Steel Strips Infrastructure Limited as management No.1 is sister concern of the management No.2 i.e. Steel Strips Wheels Limited in which the workman was employed. The condition No.9(i) mentioned in the appointment letter dated 15.04.2019 / Exhibit 'MX' is correct.

19. To my opinion from the pleadings of the parties, version of AW1 and MW1 referred above, coupled with term & condition No.9(i) of the appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX', it is duly established that management No.2 - M/s Steel Strips Wheels Limited has 5 sister companies including management No.1 i.e. M/s Steel Strips Infrastructure Limited. Appointment letter dated 15.04.2019 / Exhibit 'W1' / 'MX' is issued to the workman by the management No.1 and on the basis of the same the workman was employed with the management No.2. Thus, both the management No.1 & 2 are the employer of the workman. Terms & conditions incorporated in the appointment letter dated 15.04.2019 / Exhibit 'W1' / 'MX' are binding on both the parties i.e. employer and employee. The settled proposition of law is that two parties cannot confer jurisdiction on a Court that does not have it. This is because the Court must have jurisdiction, inherent jurisdiction, or power conferred by a statute to hear a case. If a Court had no jurisdiction, parties by consent cannot confer jurisdiction. The claimant / workman may present the industrial dispute reference in the Court / Tribunal, within whose local limits the management / employer / respondents against who claim arises, carries on its business. In the present case, the workman was issued appointment letter by management No.1 and employed with the management No.2. Head office of both the managements No.1 & 2 situates at Sector 26, Madhya Marg, U.T. Chandigarh i.e. within the territorial jurisdiction of this Court. This fact accompanied with Clause 9(i) of the appointment letter Exhibit 'W1' / 'MX' attracts the territorial jurisdiction of Industrial Tribunal & Labour Court, U.T. Chandigarh. Accordingly, the present industrial dispute reference is well within the territorial jurisdiction of the present Court.

20. Accordingly, this issue is decided against the managements No.1 to 5 and in favour of the claimant / workman.

#### **Issues No. 1, 2 & 5A :-**

21. All these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issues No.1 & 2 is on the workman and onus to prove issue No.5A is on the management.

22. To prove claim statement workman Ankur Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W5', Exhibit 'W5/1' to Exhibit 'W5/4' and Mark 'A' to Mark 'F'.

23. On the other hand, the managements examined MW1 Naresh Kumar Kapil, who vide his affidavit Exhibit 'MW1/A' deposed that he has been authorised by the managements No.1 to 5 by way of authorisation Exhibit 'M4' and Exhibit 'M5'. MW1 in his remaining testimony deposed the entire material contents of the joint written statement which are not reproduced here to avoid repetition. MW1 supported his version with documents Exhibit 'M6' to Exhibit 'M8'.

24. From the oral as well as documentary evidence led by the parties it comes out that undisputedly workman remained in the employment of managements No. 1 & 2 from 15.04.2019 to 12.07.2021. Thus, undisputedly the workman has completed continuous service of 240 days in 12 calendar months preceding termination of his services. Thus, the workman fulfills the requirement of Section 25B of the ID Act.

25. The workman has alleged that on 12.07.2021 the management terminated his services w.e.f. 13.07.2021 by verbal order. On 13.07.2021 the workman was not permitted to enter the premises of the management-company. Learned Representative for the workman argued that before terminating the service of the workman, the management has neither complied with terms & conditions incorporated in the appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX' nor followed the provision of Section 25F of the ID Act. On the other hand, Learned Representative for the managements argued that the workman himself absented from duty w.e.f. 13.07.2021 and his services were terminated as per Clause 4 of the appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX'. The management issued letters dated 09.08.2021 / Exhibit 'M7' and 16.08.2021 / Exhibit 'M8' but the workman did not respond and consequently the services of the workman were terminated vide letter of termination dated 20.08.2021 / Exhibit 'W4'. To my opinion, in order to ascertain whether the order of termination dated 20.08.2021 / Exhibit 'W4' is legal or not, first of all it is necessary to go through clause of the appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX' which reads as below :-

**"4. SEPARATION/TERMINATION**

*During your employment with SSWL, the contract of appointment will be terminated by giving three month (s) notice by either side or payment of three month's last drawn basic salary in lieu of such notice on either side. However, the management may at its discretion terminate your services without any notice period or salary in lieu thereof, in case of breach of any of the conditions of this letter or misconduct or Unauthorized absence from duty for a period of 5 working days or you are incapacitated to perform your duties by reason of fitness, accident or any other cause. The company will be entitled to take legal action, in case of breach of any conditions of this letter/misconduct.*

*The management, however, reserves the right not to accept the payment for waiving off the notice period during your employment. If your presence is required for completion of assigned task, you may not be relieved earlier than the expiry of your entire notice period. In any case, the relieving date within the notice period will be at the sole discretion of the management. Violation at this would force the company to forfeit all your dues and take necessary legal action for any damages caused to the company on account of you're leaving the company without serving the entire notice period.*

*You will not be allowed to avail any Earned leave during the notice period. In case you take any leave while serving your notice period, the management reserves the right to extend your notice period by the number of days of leave taken.*

*Upon termination of your employment, your account will be settled only after you have returned all company property including all documents and items belonging to the Company or which contain or refer to any confidential Information about the company and which are in your possession."*

26. As per Clause 4 referred above, before terminating the services, the management must issue three months prior notice or to pay three months' salary in lieu of notice period. In the present case, the management has taken the plea of un-authorised absence from duty of the workman for more than 5 days w.e.f. 13.07.2021. The management alleged that before passing of order of termination vide letter dated 20.08.2021 / Exhibit 'W4', letter dated 09.08.2021 / Exhibit 'M7' was issued to the workman. The perusal of



letter Exhibit 'M7' would show that the same was issued to the workman after service of workman's legal notice to the management-company. In letter Exhibit 'M7' the management advised the workman to withdraw his legal notice alleging that it is not based on correct facts and is also defamatory and to report for duty. As far as letter dated 09.08.2021 / Exhibit 'M7' is concerned, the same was issued by the management after receipt of the demand notice dated 21.07.2021 raised by the workman. In this regard, MW1 in his cross-examination admitted as correct that the management has filed reply dated 09.08.2021 to the workman's notice dated 21.07.2021. MW1 stated that he cannot say whether the management had issued notice of absence from duty to the workman before 21.07.2021 or after that. On the request made by the witness, he was allowed to see the record to tell the date of issuance of first notice by the management. MW1 after perusing the record stated that he has seen the record, according to which first notice by the management was issued on 09.08.2021 i.e. after workman's notice dated 21.07.2021. As per the management's plea, the workman absented from duty on 13.07.2021 and as per the version of MW1 first notice of absence from duty was issued by the management on 09.08.2021 i.e. subsequent to raising of industrial dispute by the workman by issuing demand notice dated 21.07.2021 / Exhibit 'M1' wherein the workman has challenged the verbal order of termination of his services w.e.f 13.07.2021 being illegal and sought reinstatement with consequential benefits. After the receipt of the demand notice the management for the first time issued notice dated 09.08.2021 requiring the workman to rejoin duty, to create defence. Raising of demand notice by the workman within 8 days of termination of his services by verbal order would show that the workman never intended to be absent from duty and was willing to perform duty. Under these circumstances it was mandatory for the managements - employer not only to comply with Clause 4 of the appointment Exhibit 'W1' / Exhibit 'MX' but also to comply with mandate of Section 25F of the ID Act. In this regard, MW1 in his cross-examination stated that the management has not issued three months prior notice to the workman before terminating his services. MW1 in his cross-examination further stated that no dues were paid to the workman at the time of termination of his services. MW1 stated that the performance of the work of the workman was up to the mark. The workman was given appreciation based on performance. MW1 further stated that there is no procedure to terminate services by the verbal order. In the present case, it is neither pleaded nor proved by the management that it had complied with the mandatory conditions laid down under Section 25F of the ID Act before terminating the services of the workman vide letter dated 20.08.2021 / Exhibit 'W4'. Consequently, the order of termination of services of the workman by verbal order dated 12.07.2021 w.e.f. 13.07.2021 and order of termination vide letter dated 20.08.2021 / Exhibit 'W4' are illegal.

27. Learned Representative for the management argued that the workman was appointed vide appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX' to the post of Assistant Manager, the workman is seeking reinstatement to the post of the Assistant Manager. The workman was enjoying the perks of Assistant Manager and getting salary of ₹ 44,536/- which is higher to the post of an Engineer. The post of Engineer is also an administrative & supervisory post and the workman was having a designation superior to an Engineer. Thus, the workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act. Learned Representative for the management referred cross-examination of AW1 Ankur Kumar, wherein he stated that he applied to the post of Assistant Manager with the management. He accepted the terms and conditions as offered to him by the management in the appointment letter Exhibit 'W1'. AW1 in his cross-examination further stated that he has not moved any written application or letter to the management alleging that he has not been given the work as mentioned in the appointment letter. AW1 admitted as correct that in the appointment letter the job and responsibilities to be performed by him are written and he had accepted the appointment letter. AW1 further admitted as correct that he was getting the perks of Assistant Manager in his salary. AW1 admitted as correct that category of Engineer is inferior to rank of Assistant Manager. AW1 admitted as correct that one Engineer supervise the work of 200 workers. AW1 further stated that he knows that there is a workers' union in the factory of the management. He is not member of workers' union in the factory of the management. On the other hand, Learned Representative for the workman argued that the workman was not performing any supervisory, administrative or managerial duties. No employee was working under him. Learned Representative for the workman referred cross-examination of AW1 where he denied the suggestion as wrong that three employees namely Amit Jaryal, Abhishek Pathak and Harvinder Singh were working under him. AW1 denied the suggestion as wrong that he was performing supervisory

duties. From the arguments advanced by Learned Representatives for the parties and the version of AW1 Ankur Kumar referred above, it comes out that the workman was appointed to the post of Assistant Manager vide appointment letter dated 15.04.2019 / Exhibit 'W1' / Exhibit 'MX'. Admittedly, the job and responsibilities to be performed by the workman are mentioned in the appointment letter. Before proceedings further, it is necessary to know the duties and responsibilities mentioned in Clause 3 of the appointment letter dated 15.04.2019, which is reproduced as below :-

*"3. Your duties will include proper administrative control and supervision on the employees working under you from time to time. You will also sincerely work and devote fully as part of the management team in the interest of the organization. Your duties will include for efficient, satisfactory and economical operation in the area of responsibility that may be assigned to you from time to time. As a supervisory employee of this company, you will maintain a high standard loyalty, efficiency, integrity and liaise with employees/workers in the organisation properly."*

28. MW1 Naresh Kumar Kapil when put to cross-examination explained what are the administrative & supervisory functions which the workman had been performing. In this regard, MW1 in his cross-examination stated that Assistant Manager has area of responsibilities in research and development which includes technical, supervisory and administrative duties. For development of new product, the Assistant Manager has to correspond with the customers and marketing team which is administrative and supervisory function. From the aforesaid version of MW1 it is sufficiently proved that the workman was not exercising any administrative and supervisory functions over any employee inferior to him in designation or working under him. Moreover, no inference can be drawn from a stray sentence deposed by a witness. The testimony of a witness is to be read in whole. AW1 in his cross-examination admitted as correct that the category of Engineer is inferior to rank of Assistant Manager. AW1 admitted as correct that one Engineer supervise the work of at least 200 workers. AW1 voluntarily stated that it is not necessary that 200 workers are working. From the aforesaid version of AW1, no inference can be drawn that the Engineer was working under the Assistant Manager. The management has not placed on record any list of hierarchy of its employees. The post of Assistant Manager has no comparison to the post of an Engineer. There is no evidence of the management showing any employee working subordinate to the workman or whose work was allegedly supervised by the workman. AW1 has denied the suggestion as wrong that three employees namely Amit Jaryal, Abhishek Pathak and Harvinder Singh were working under him. The suggestion denied by a witness is no evidence, unless proved otherwise. In the present case, there is no evidence of the management to prove the suggestion that above mentioned three employees were working under the workman.

29. So far as the designation of Assistant Manager is concerned, it is a settled law that designation is not of much importance. Important is what is the nature of duties being performed by an employee. The determining factor the main duty of an employee and not some incidentally done work. The case law referred by Learned Representative for the workman **Anand Regional Coop. Oil Seedsgrowers' Union Limited Versus Shaileshkumar Harshadbhai Shah, 2006 SCC (L&S) 1486** is applicable to the facts of the present case to an extent wherein it is held primary duties performed by an employee are more important to ascertain whether he is a 'workman' or not and the designation of the employee or the name assigned to his class should not be given undue importance and mere existence of subordinates whose work is required to be supervised is a sine qua non to prove supervisory work and the employee must have authority to initiate departmental proceedings against the sub-ordinates. In view of the discussion made above, it is proved that the workman was performing duties technical in nature and he did not perform any managerial, supervisory or administrative duties. Thus, the workman is a workman as defined under Section 2(s) of the ID Act.

30. Consequently, verbal order of termination of services w.e.f. 13.07.2021 and subsequent order of termination of services vide letter dated 20.08.2021 being illegal are hereby set aside and workman is held entitled to reinstatement. AW1 / Ankur Kumar in his cross-examination admitted that w.e.f. 19.08.2022 he is working with Elofic Industries Limited, Faridabad and getting monthly salary / CTC in the sum of ₹ 70,000/-

from Elofic Industries Limited, Faridabad. Since the workman is gainfully employed since 19.08.2022, therefore, the workman is entitled to 50% back wages confined to period w.e.f. the date of termination 14.07.2021 till 18.08.2022.

31. Accordingly, issues No. 1 & 2 are proved in favour of the workman and against the managements and issue No.5-A is proved against the managements and in favour of the workman.

**Issue No. 5 :**

32. Learned Representative for the management argued that the claim statement is not maintainable on the ground that this Court has no territorial jurisdiction and further the workman does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act. To my opinion, in view of the findings on issue No.4 and 5A, which are recorded in favour of the workman, the above argument advanced by Learned Representative for the management is devoid of merits. The workman on being aggrieved from illegal termination of his services, raised industrial dispute and on failure of conciliation proceedings, by invoking Clause 9(i) of the appointment letter Exhibit 'W1', has presented the present claim statement / industrial dispute reference with a valid cause of action and locus standi and well within the territorial jurisdiction of this Court. I do not find any defect so far maintainability of the present claim statement / industrial dispute reference is concerned.

33. Accordingly, this issue is decided against the managements and in favour of the workman.

**Relief :**

34. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is held entitled to reinstatement along with 50% back wages confined to period w.e.f. the date of termination 14.07.2021 till 18.08.2022. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till its actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated : 10.10.2024.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152

Secretary Labour,  
Chandigarh Administration.



**CHANGE OF NAME**

I, Satinder Kumar S/o Birj Nandan # 1456/21, Sector 29-B, Chandigarh, have changed the name of my minor daughter from Tejsavi to Tejasvi.

[1862-1]

I, Md. Mustfa S/o Fakhruddin # 1310, 2nd floor, Sector 45, Burail, Chandigarh, have changed my name to Mohammad Mustfa.

[1863-1]

I, Vengatesan Son of Muthuswamy Residence of # 6182, Maloya, Chandigarh, have changed my minor daughter's name from Cracy Aadhvira to Gracy Aadhira.

[1864-1]

I, Gopal Singh Negi S/o Anop Singh Negi R/o # 321, Khuda Ali Sher, Sector 1, Chandigarh-160103, have changed my name Gopal Singh.

[1865-1]

I, Shanker Bahadur S/o Chander Bahadur, R/o House No. 535, Near Shiv Mandir, Sector 45, Burail, Chandigarh, have changed my name from Shanker Bahadur to Shanker Budha.

[1866-1]

I, Ragni Pasi W/o Vikas, # 1807, Nirvana Society, Sector 49-B, Chandigarh, have changed my name from Ragni Pasi to Ragini.

[1867-1]

I, Ramesh Kumar S/o Badri Parshad Yadav # 195, Dadu Majra Colony, Chandigarh, have changed my name to Ramesh Kumar Yadav.

[1868-1]

I, Vishal S/o Kanchan, House No. 1223, Sector 52, Chandigarh, have changed my name from Vishal to Vishal Roy.

[1869-1]

I, Gopal Krishan S/o Omparkash R/o # 3441, Sector 15-D, Chandigarh. My minor daughter's name has been changed from Aaradhya to Yashika.

[1870-1]

*"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."*